PP

v.

VIJAYAKUMAR KUMARA GURU & ANOR

HIGH COURT MALAYA, SHAH ALAM
SU GEOK YIAM J
[CRIMINAL TRIAL NO: 45-82-2004]
26 MARCH 2011

CRIMINAL PROCEDURE: *Sentencing - Principles - Conviction on reduced charge of possession of dangerous drugs - Whether sentence ought to reflect seriousness of offence - Whether plea of guilt strong mitigating factor - Whether weight of drugs considered in sentencing - Whether accused had mens rea possession*

WORDS AND PHRASES: *"pass sentence according to law" - Meaning of - Whether sentence must be within punishable section and must be assessed and passed in accordance with established judicial principles*

The two accused persons were initially charged for an offence of trafficking in dangerous drugs under s. 39B(1)(a) of the Dangerous Drugs Act 1952 ('the DDA') and punishable under s. 39B(2) of the DDA, to wit, 68.2 grammes of heroin and 149.8 grammes of monoacetylmorphine. However, at the conclusion of the prosecution case and on the day fixed for submissions, the prosecution tendered an amended charge for unlawful possession of the dangerous drugs, an offence under s. 12(2) of the DDA and punishable under s. 39A(2) of the DDA. Both accused pleaded guilty to the amended charge and was thus convicted as per the amended charge. However, before the sentence was imposed, both accused persons presented their plea in mitigation. Among the mitigating factors were, *inter alia*, that the plea of guilt had saved the court's time and cost and both had been remorseful. The accused also pleaded for the court to take into account and strike a balance between the interest of the accused and public interest.

Held (sentencing both accused to 18 years' imprisonment and ten strokes of whipping each):

(1) Section 183 of the Criminal Procedure Code provides that if the accused is convicted, the court shall pass sentence according to law. The phrase "pass sentence according to

A law" in the section has been held to mean that the sentence imposed must not only be within the ambit of the punishable section but it must be assessed and passed in accordance with established judicial principles. *Re Chong Cheng Hoe & Ors* (refd); *PP v. Jafa Daud* (refd); *Phillip Lau Chee Heng v. PP* (refd). The B sentence meted out by the court must also reflect the seriousness of the drug menace which is seriously affecting the society at large. (para 41)

(2) In the instant case, the court took into account that both the C accused were first offenders and that they had pleaded guilty to the reduced charge. Nevertheless, there was not much saving of the court's time and costs as the plea was recorded at the close of the prosecution case, after having called the witnesses and the evidence. Moreover, there was sufficient D evidence which showed that both accused had custody, control and knowledge of the dangerous drugs and thus had the *mens rea* possession of the drugs. Hence, both the accused did not have available defence against them. (paras 45, 46, 47)

E **(3)** The plea of guilt could not be a powerful mitigating factor. In view of the large amount of the drugs involved, absence of any evidence to show that the drugs were for their own consumption and the gravity of the offence, public interest dictates that the court imposes a deterrent sentence on the accused. (paras 47 & 48)

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(4) The court had taken into consideration that the weight of the heroin was 13.64 times of the minimum weight provided in para. (a) of s. 39A(2) of the DDA and the weight of the monoacetylmorphine was 29.96 times more than the minimum G weight provided in para (c) of s. 39A(2) of the DDA. In the circumstances, the sentence of 18 years' imprisonment and whipping of ten strokes for each of the accused was an appropriate sentence to deter both accused from repeating the offence. At the same time it would be a deterrent to the other H would be offenders from committing the offence under the mistaken impression that if they were caught and convicted they would only receive a lenient sentence. Therefore, it would serve public interest. (paras 48 & 49)

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Case(s) referred to:

Phillip Lau Chee Heng v. PP [1988] 2 CLJ 873; [1988] CLJ (Rep) 144 HC ***(refd)***

PP v. Darmalingam R Kandiah [1988] 1 CLJ 840; [1988] 2 CLJ (Rep) 227 HC ***(refd)***

PP v. Govindnan Chinden Nair [1998] 2 CLJ 370 HC ***(refd)***

PP v. Jafa Daud [1981] 1 LNS 28 ***(refd)***

PP v. Lee Say & Ors [1985] 2 CLJ 155; [1985] CLJ (Rep) 683 HC ***(refd)***

PP v. Loo Choon Fatt [1976] 1 LNS 102 HC ***(refd)***

PP v. Low Kok Wai [1988] 2 CLJ 105; [1988] 2 CLJ (Rep) 268 HC ***(refd)***

PP v. Tia Ah Leng [2000] 5 CLJ 614 HC ***(refd)***

R v. Ball 35 Cr App R 164 ***(refd)***

Re Chang Cheng Hoe & Ors [1966] 1 LNS 155 HC ***(refd)***

Sau Soo Kim v. PP [1975] 1 LNS 158 FC ***(refd)***

Sim Gek Yong v. PP [1995] 1 SLR 537 ***(refd)***

Zaidon Shariff v. PP [1996] 4 CLJ 441 HC ***(not foll)***

Legislation referred to:

Criminal Procedure Code, s. 183

Dangerous Drugs Act 1952, ss. 12(2), 39A(2), 39B(1)(a), (2)

For the prosecution - Badiuszaman (Dato' Razali Che Ani, Siti Rafidah Zainuddin with him), DPPs

For both accused - Rajpal Singh; M/s Rajpal S & Assocs

Reported by S Barathi

JUDGMENT

Su Geok Yiam J:

[1] The 1st and 2nd accused were initially charged for an offence of drug trafficking under s. 39B(1)(a) of the Dangerous Drugs Act 1952 (the "DDA") and punishable under s. 39B(2) of the DDA Act involving 68.2 grammes of heroin and 149.8 grammes of monoacetylmorphine making it a total of 218 grammes of dangerous drugs.

[2] The original charge against them, P2, states as follows in the Malay language:

> Bahawa kamu bersama-sama pada 13 Mei 2003 jam lebih kurang 6.30 petang di alamat No. 4, Tingkat 10, Blok A, Menara Sri Damansara, Jalan Margosa SD10/E, Taman Sri Damansara, Bandar Sri Damansara, Kuala Lumpur, bagi mencapai niat bersama kamu semua, telah didapati memperedarkan dadah berbahaya sejumlah berat 218 gram (68.2 gram Heroin dan 149.8

A gram Monoacetylmorphine) dan oleh yang demikian, kamu telah melakukan suatu kesalahan di bawah seksyen 39B(1)(a) Akta Dadah Berbahaya 1952 dan boleh dihukum di bawah seksyen 39B(2) Akta yang sama dan dibaca bersama seksyen 34 Kanun Keseksaan.

B **[3]** Both accused claimed trial to the charge.

[4] The prosecution called seven witnesses. They are PW1, the storekeeper, L/Kpl 1211337 Haris Fadilah bin Baki, PW2, the chemist, Wan Rahimah binti Wan Ahmad, PW3, the police C photographer, L/Kpl RF 14087 Adam Shah Jerry bin Abdullah, PW4, one of the raiding officers, D/LKpl 83262 Mansor bin Majid, PW5, the investigating officer, ASP Suzalani bin Shafie, PW6, the house owner's father, Thomas Varghese s/o M.T Thomas and PW7, the head of the raiding party, C/Insp. I/13578 D Raja Kumar s/o Rajoo.

[5] The prosecution led evidence that on 13 May 2003, at about 6.30pm, acting on information received, a police party headed by PW7 raided an apartment at No.4, Block A, 10th E Floor, Menara Sri Damansara, Jalan Margosa SD10/1E, Taman Sri Damansara, Bandar Sri Damansara, Kuala Lumpur (the "apartment"). At the time of the raid there were only two occupants in the apartment, namely, Vijaya Kumar s/o Kumara Guru, the 1st accused, and Kalidasan s/o T. Subramaniam, the F 2nd accused.

[6] It was the 1st accused who unlocked and opened the front grill and front wooden door of the apartment to PW7. PW7 then identified himself as a police officer to the 1st accused by showing his authority card to the 1st accused. He also told the 1st G accused the purpose of the police raid at the apartment. The 1st accused looked shocked. PW7 seized the key which was used by the 1st accused to unlock the Solex padlock at the front grill. He then entered the apartment. He proceeded to conduct a body search on the 1st accused. He seized the identity card of the 1st H accused. But he did not find any contraband on him. PW7 then directed two of his men to stand watch over the 1st accused. He also directed the rest of his men except for PW4, to guard the front door of the apartment. He then went with PW4 to a room located on the right side of a corridor inside the apartment.

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[7] PW7 found the door of the room ajar. He saw the 2nd accused seated on a bed in the room. PW7 entered the room together with PW4. He identified himself as a police officer to the 2nd accused who tried to run out of the room. However, PW7 and PW4 managed to overpower and arrest the 2nd accused after a struggle. Upon searching the room, PW7 found a navy blue coloured NIKE bag with blue stripes and a zip (the "bag") on the floor in front of a cupboard. The bag, P29, was open. PW7 searched the bag.

[8] Inside the bag he found five newspaper packages, each tied with a rubber band. Inside each newspaper package was a plastic packet which contained a cream coloured substance which he suspected to be heroin. He also found one transparent plastic packet which contained a cream coloured substance which he suspected to be heroin. He further found one big transparent plastic packet. Inside the one big transparent plastic packet he saw ten bundles of small transparent plastic packets. Each bundle was tied with a rubber band. Each bundle had ten plastic packets. Altogether there were 100 small transparent plastic packets. All of them contained a cream coloured substance which he suspected to be heroin.

[9] Inside the cupboard he found a weighing scale, two sealers, a spoon, a Nokia warranty card bearing No. 84908 in the name of the 2nd accused, five packets of small empty transparent plastic packets and a red coloured plastic bag containing a quantity of rubber bands. He seized all these items. He also seized two shirts from inside the same cupboard. He tried the two shirts on the 2nd accused. He found that they fitted the 2nd accused. He did not try the two shirts on the 1st accused because the 1st accused was much bigger in size as compared to the size of the two shirts.

[10] He also conducted a body search on the 2nd accused and seized his identity card but he did not find any contraband on him. He searched the rest of the apartment. He saw shirts, trousers, towels and blankets in the two rooms. The kitchen looked like it was being used by the occupants of the apartment. However, he did not find any other contraband in the apartment.

[11] He then told both the accused the reasons for their arrest. Both the accused and the seized items together with two other keys, to wit, the key to the front door grill and the key to the

front wooden door, were then taken to the Gombak police station (the "Gombak police station") by PW7. At the police station, PW7 lodged a police report, to wit, Sg Buloh Report No. 3729, P33.

[12] He then placed his markings on the seized items. He then took both the accused and the seized items to the Damansara police station and handed them over to PW5, ASP Suzalani Bin Shafie, the investigating officer as the apartment was situated within the jurisdiction of the Petaling Jaya district police headquarters. Both of them then signed a handing over certification, P34. After examining all the seized items SP5 kept them in his steel cabinet which he then locked. No one else had access to his steel cabinet, except himself.

[13] PW7's evidence concerning the police raid at the apartment was corroborated by PW4. PW7's evidence concerning the handing over of the seized items and the two accused to PW5 was corroborated by PW5's evidence. On 16 May 2003, at about 11.55am he went to the apartment together with PW3 and PW7. He was able to open the Solex padlock, the front grill and the front wooden door of the apartment with the three keys which were given to him by PW7. In accordance with his instructions, PW3 took 14 photographs, P28(1)-(14), of the apartment. He drew a sketch plan of the apartment, P35. He also seized the Solex padlock at the front grill.

[14] On the same day, at about 1.10 p.m. in the afternoon, he unlocked his steel cabinet and took out the seized items and placed them on a table. He then directed PW3 to take 19 photographs, P29(1)-(29), of the seized items.

[15] On 21 May 2003, at about 10.50am in the morning he took out the bag with the five newspaper packages which contained the five transparent plastic packets, the one transparent plastic packet and the one big transparent plastic bag with the 100 small transparent plastic packets together with their contents. He then sent all the items to the Cheras Forensic Laboratory for purposes of fingerprint lifting together with the requisite application form, P36. He handed them over to Supt Tan Kok Liang. Both of them signed a handing over certification, P37, which was prepared by Supt Tan Kok Liang.

[16] On 26 May 2003, at about 9am, in the morning, Supt Tan Kok Liang handed back to him only the suspected drug related items together with the fingerprint report which was negative. Both of them signed another handing over certification, P38.

[17] On the same day, he tried on the 2nd accused, the two shirts, P51 and P52, which PW7 had seized from the cupboard in the room in the apartment in which the 2nd accused was arrested at the time of the police raid. He found that they fitted the 2nd accused. In accordance with his instructions, PW3 took six photographs, P42(1)-(6), of the 2nd accused wearing the two shirts. However, he found that they did not fit the 1st accused.

[18] On 29 May 2003, at about 2.20pm, in the afternoon, he took out all the suspected drug related items from his steel cabinet, placed them in a box, marked and sealed it with the seal of the Royal Malaysian Police Force. He then handed the box, P7, over to PW2 for analysis together with the requisite application form, P8. PW2 issued him a receipt, P9.

[19] On 3 October 2003, at about 10.40am, in the morning, he received back the same box, P7, from PW2 but sealed with the seal of the Chemistry Department, Petaling Jaya one together with the chemist report, P10, of PW2 which bore the laboratory reference No. (PJ) FOR 4030/03-3.

[20] PW2 has testified that the results of her analysis on the suspected drug-related items show that the contents of the five transparent plastic packets in the five newspaper packages, the contents of the one big transparent plastic packet and the contents of the 100 transparent small plastic packets inside the 1 big transparent plastic packet contained a total net weight of 218 grammes (68.2 grammes heroin and 149.8 grammes monoacetylmorphine) of dangerous drugs and both types of dangerous drugs are listed in the first schedule of the DDA.

[21] On 19 January 2004, at about 5.12pm, in the afternoon he received back from Supt Tan Kok Liang the bag, the five newspaper packages without their contents, the five rubber bands and Supt Tan Kok Liang's report of his examination of the items which was negative. He issued a receipt, P39, to Supt Tan Kok Liang.

[22] On 13 February 2004, PW5 took out all the seized items from his steel cabinet and at 10.10am in the morning, handed them over to SM Rahim bin Abdullah, the storekeeper at the Exhibits Store in the Criminal Investigations Department, Narcotics at the Selangor Police Contingent Headquarters for safekeeping. He signed in the Register of Exhibits, P5, after SM Rahim bin Abdullah had duly registered the box by giving it a distinct registration number, to wit, No. 8/04.

[23] PW1 who took over the position of Store Keeper at the Exhibits Store from SM Rahim bin Abdullah on 17 April corroborated PW5's evidence based on the entries in the Register of Exhibits, P5. He testified that he was the only one who had access to the Exhibits Store as he was the only one who held the key to it.

[24] PW7 was able to identify all the items which he had seized from the apartment when they were shown to him in court. So there was no break in the chain of evidence concerning the seized items, in particular, the drug-related exhibits.

[25] His investigations disclosed that prior to the police raid at the apartment, PW6 had rented out the apartment to a male Indian who stayed in the apartment together with his friend, also a male Indian.

[26] PW6 testified that the apartment belonged to his son, Varghese Thomas, aged 55 years old, who lived and worked in Dubai. He had bought the apartment in the year 1992, in the name of his son because he himself could not get a loan from a bank to finance the purchase due to his age. The apartment was completed in the year 1995. In the year 2003 he rented it out through an agent to a male Indian at a monthly rental of RM800 or RM950. He has met the agent. The tenant, through the agent, had to pay him a sum representing two months rental as a security deposit, half a month's rental as the deposit for the utilities and a month's rental. The keys to the apartment were given to the agent through the manager of the corporation which was managing the apartments.

[27] He did not enter into any tenancy agreement with the tenant because the agent was supposed to get it done but he did not attend to it. The agent only paid him a sum of RM2,000 and told him he would pay him the balance of the security and utilities deposits later. But he did not do it. The one month's rental was also not paid.

[28] So in March 2003 he went to the apartment to collect the balance of the deposits and also the one month's rental which had still not been paid. On arrival at the apartment, two men opened the front door after about 15 to 20 minutes. One was fat and one was thin. He also asked them to sign the tenancy agreement and to pay the balance of the deposits and the unpaid rental. In his examination-chief he was able to identify the 1st accused as the fat person who had opened the front door. He was not able to identify the 2nd accused as the thin person. He explained that the reason was because he did not see the thin person clearly as he was standing behind the fat person.

[29] However, in his cross-examination he said that he was not sure whether the 1st accused was the fat person who opened the door. Nevertheless, he was able to remember that one was bigger built and the other was slimmer built. In his re-examination, he explained that he was not sure whether the 1st accused was the fat person because the incident occurred some years back and the two persons whom he met at the apartment looked younger than the 1st and 2nd accused.

[30] Upon the conclusion of the prosecution case and on the day fixed for submissions, the prosecution tendered an amended charge, P59, for unlawful possession of the dangerous drugs which is an offence under s. 12(2) of the DDA and punishable under s. 39A(2) of the DDA.

[31] Both the accused pleaded guilty to the amended charge and admitted the facts as contained in the evidence adduced by the seven prosecution witnesses and the exhibits which had already been tendered and marked by the court as P5 to P56.

[32] The court convicted them as per the amended charge, P59.

[33] Before the court passed sentence on the two accused their learned counsel informed the court that the 1st and 2nd accused were aged 26 and 19 years, respectively, at the time of the commission of the offence. They were aged 33 years and 25 years, respectively, at the time of sentencing. Both were unmarried.

[34] The 1st accused was engaged to be married before he was arrested in connection with the offence. He is the only child of his parents. When he was one year old, his father died. When he

was 20 years old, his mother died. Since the death of his mother he has been living with his aunt. He supports his aunt and her children. He works as a personal driver and earns a monthly salary of RM2,200. He is remorseful and regrets his actions. He prays for an opportunity to turn over a new leaf and to be a good citizen. He also wishes to be released early so that he can get married to his fiancée and be a responsible husband to her.

[35] The 2nd accused is the eldest of two siblings and comes from a broken family. When he was three years old his father abandoned him, his younger brother and his mother. When he completed his Form Five (SPM) examination he worked as a garment salesman in Petaling Jaya in order to support his aged mother and younger brother. He is remorseful and regrets his actions. He had mixed with the wrong company. He has been in remand for six years for this offence. He prays for an opportunity to turn over a new leaf. He promises the court that he will not commit any more offences in the future.

[36] In their plea of mitigation, their learned counsel relied on their plea of guilty which he submitted had saved the time of the court and the costs to the public. He cited the cases of *Zaidon Shariff v. PP* [1996] 4 CLJ 441 and *Sau Soo Kim v. PP* [1975] 1 LNS 158. He also prayed that the court takes into account and strikes a balance between the interests of the two accused and the public interest. He further prayed that the sentence of imprisonment be ordered to take effect from the date of their arrest and that the court imposes on them nothing more than the minimum ten strokes of the whip as provided for in s. 39A(2) of the DDA.

[37] The learned Deputy Public Prosecutor (the "DPP") prayed for an appropriate sentence and for the court to take into consideration the rampancy of the offence of drug possession.

[38] After hearing their plea in mitigation and the submissions of the learned DPP, the court sentenced the 1st accused to 18 years imprisonment from his date of arrest on 13 May 2003 and the mandatory minimum whipping of ten strokes as provided for in s. 39A(2) of the DDA. The court also sentenced the 2nd accused to 18 years imprisonment from his date of arrest on 13 May 2003 and the mandatory minimum whipping of ten strokes as provided for in s. 39A(2) of the DDA.

[39] Both the accused are dissatisfied with the sentence of 18 years imprisonment (the "said sentence") imposed on each of them by this court and have filed their notice of appeal to the Court of Appeal.

[40] Below are the reasons why this court imposed the said sentence:

[41] Section 183 of the Criminal Procedure Code provides that if the accused is convicted, the court shall pass sentence according to law. The phrase "pass sentence according to law" in the section has been held to mean that the sentence imposed must not only be within the ambit of the punishable section but it must be assessed and passed in accordance with established judicial principles (see *Re Chang Cheng Hoe & Ors* [1966] 1 LNS 155; *PP v. Jafa Daud* [1981] 1 LNS 28; and *Phillip Lau Chee Heng v. PP* [1988] 2 CLJ 873; [1988] CLJ (Rep) 144).

[42] In *R v. Ball* 35 Cr App R 164 the learned judge laid down the principles which should guide a court in considering the appropriate sentence that should be imposed in the following terms:

> In deciding the appropriate sentence a Court should always be guided by certain considerations. The first and foremost is the public interest. The criminal law is publicly enforced, not only with the object of punishing crime, but also in the hope of preventing it. A proper sentence, passed in public, serves the public interest in two ways. It may deter others who might be tempted to try crime as seeming to offer easy money on the supposition that, if the offender is caught and brought to justice, the punishment will be negligible. Such a sentence may also deter the particular criminal from committing a crime again, or induce him to turn from a criminal to an honest life. The public interest is indeed served, and best served, if the offender is induced to turn from criminal ways to honest living. Our law does not, therefore, fix the sentence for a particular crime, but fixes a maximum sentence and leaves it to the Court to decide what is, within that maximum, the appropriate sentence for each criminal in the particular circumstances of each case. Not only in regard to each crime, but in regard to each criminal, the Court has the right and the duty to decide whether to be lenient or severe.

[43] Therefore, the most important consideration in the sentencing of an accused is the question of public interest (see *PP v. Loo Choon Fatt* [1976] 1 LNS 102; 1976] 2 MLJ 256; and *PP*

v. Darmalingam R Kandiah [1988] 1 CLJ 840; [1988] 2 CLJ (Rep) 227). The court has the discretion and the duty to pass an appropriate sentence within the prescribed punishment after taking into consideration the facts and circumstances of each case.

[44] In the instant case the sentence meted out by the court must also reflect the seriousness of the drug menace which is seriously affecting the society at large. In *PP v. Loo Choon Fatt*, *supra*, the learned judge traced the gradual attitude of the legislature towards drug abuse by examining the various amendments which were made to the DDA. These amendments reflected the gradual enhancement of the penalties attached to the various offences under the DDA. The learned judge said as follows at p. 257:

> It is common sense to say that behind these legislative exercises was the government's realization *albeit* gradual, of the problem of drug abuse in this country, the degenerating effect of the misuse of dangerous drugs and the attendant dangers it has posed to society itself. The amendments passed by Parliament therefore reflect the public policy. It must be presumed that behind the public policy is the consideration of public interest.
>
> The change in the attitude of the legislature itself during the last three years reflects the seriousness of the problem. In my view the courts will not be performing their functions honestly if the seriousness of the situation is not reflected in the sentence imposed if the sentence appears to defeat the object of the statute. This is not saying that the courts in the treatment of drug offences should at all times be severe. Each case has to be determined on its own merits. But in every case the courts must be realistic and rational.

[45] In the instant case the court took into account that both the accused were first offenders and that they had pleaded guilty to the reduced charge.

[46] However, the court noted that there was not much saving of the court's time and the public's costs as the prosecution had already called a total of seven prosecution witnesses and had closed its case. The trial commenced on 24 April 2007 and lasted 13 days inclusive of the day of the sentencing. There were 224 pages of typed written notes of evidence. The evidence showed that although the 2nd accused was found alone in a room in the apartment where the contraband was found, the door to the room was open at that time and the 1st accused was the one who

opened the front grill and the front door to PW7. Both of them were also the only occupants in the apartment at the time of the police raid. The cupboard from which the paraphernalia, which was used to weigh, pack and seal the drugs into small transparent plastic packets, was found not locked. The bag containing the dangerous drugs was unzipped and was found on the floor near the cupboard.

[47] Although both the accused were not positively identified by the house owner's father, the description of the size of the tenant who rented the apartment fitted the 1st accused. There was, therefore, sufficient evidence which showed that both the accused had custody, control and knowledge of the dangerous drugs. Therefore, both the accused had *mens rea* possession of the dangerous drugs at the time and place as stated in the amended charge. So effectively the two accused had no available defence to the charge against them. That being the case, their plea of guilt could not be a powerful mitigating factor (see *PP v. Low Kok Wai* [1988] 2 CLJ 105; [1988] 2 CLJ (Rep) 268).

[48] The court was also of the view that because of the facts and circumstances of this case, the large amount of the two types of dangerous drugs involved in this case, namely, 68.2 grammes of heroin and 149.8 grammes of monoacetylmorphine, the absence of any evidence to show that the drugs were for their own consumption and the gravity of the offence, public interest dictates that the court imposes on both the accused a deterrent sentence. The punishment which is provided for in s. 39A(2) of the DDA is imprisonment for life or for a term which shall not be less than five years and also whipping of not less than ten strokes where the subject matter of the offence is five grammes or more in weight of heroin (under paragraph(a)) or five grammes or more in weight of monoacetylmorphine (under para. (c)). The court had taken into consideration that the weight of the heroin is 13.64 times the minimum weight provided in para. (a) of s. 39A(2) of the DDA and that the weight of the monoacetylmorphine is 29.96 times more than the minimum weight provided in para. (c) of s. 39A(2) of the DDA.

[49] The court was of the view that a sentence of 18 years imprisonment and whipping of ten strokes for each of the accused was an appropriate sentence to deter the two accused from

repeating the offence and to deter other would be offenders from committing the offence under the mistaken impression that if they were caught and convicted they would only receive a lenient sentence and that, therefore, it would serve the public interest. The court was of the view that although the *ratio decidendi* in the case of *Zaidon Shariff v. PP*, *supra*, which was cited by the learned counsel for the two accused was not applicable to the facts in the instant case because in that case the type of dangerous drug which was involved in that appeal was ganja and its weight was only 0.04 grammes, the principles which were held to be applicable in guiding a court in considering what is an appropriate sentence to pass by the learned judge in that case were similarly applicable to the instant case.

[50] Incidentally, the learned judge who decided the appeal in that case is the same judge who decided the case of *PP v. Tia Ah Leng* [2000] 5 CLJ 614. At pp. 446-447, His Lordship said as follows:

> The appropriate sentence for each drug offence depends on its own peculiar circumstances. In particular the weight of the drugs found on a person plays a significant role in assessing sentence. In *Oloofen v. PP* [1964] MLJ 305 Wee Chong Jin CJ emphasised the consideration to be given to the quantity of drugs involved in drug offences in assessing sentence. The same guideline applies even to more serious drug offences. In *PP v. Ang Soon Huat* (*Mallal's Digest* 4th Ed 1994 Reissue Vol 5 No 2378) it was held that in drug trafficking cases the sentence should be proportionate to the gravity of the offence, which is the quantity of the drugs that was being trafficked. This is also manifested by the fact that the Dangerous Drugs Act 1952 (the Act) itself prescribes different penalties for drug offences depending on the weight of drugs involved. In *Mohamed bin Abdul Rahman v. PP* [1979] 1 MLJ 252 Syed Othman J (as he then was) substituted a sentence of six months imprisonment for possession of 0.10 grams of heroin with a fine of RM400 in default four months; imprisonment. Furthermore, the penalty under the Act is also dependent on the nature of the drugs involved. For example, an offence for possession of ganja attracts lighter sanctions than one for possession of heroin under the Act. As the dangerous drugs involved in this appeal is ganja and its weight is only 0.04 grams, the learned Magistrate ought to have taken these factors into account in assessing sentence. Evidently, he was swayed by the overstatement that drug offences require a deterrent sentence.

[51] In the case of *PP v. Tia Ah Leng supra*, Augustine Paul J (as he then was) held that the demands of public interest may, in the circumstances of a particular case, far outweigh any mitigating effect which might have been attached to an accused's guilty plea (see *Sim Gek Yong v. PP* [1995] 1 SLR 537, *PP v. Govindnan Chinden Nair* [1998] 2 CLJ 370 and *PP v. Lee Say & Ors* [1985] 2 CLJ 155; [1985] CLJ (Rep) 683). In *PP v. Tia Ah Leng*, *supra*, the learned judge also held that an unusually large quantity of drugs in the possession of an accused was evidence of his motive and showed his degree of involvement. It also constituted a potential for damage to the community as well as being an indicator of the gravity of the offence.

[52] Malaysians have become familiar with the many sign boards prominently placed in strategic spots all over the country which warn the public that dangerous drugs are the No. 1 enemy of the public. Many members of the public have also been victims of crimes such as snatch thefts, smash-and-snatch thefts, armed robberies and house break-ins which have been committed by offenders who are drug addicts and who have resorted to the commission of such crimes in order to feed their drug addiction and to sustain their daily living. In many of the cases, the victims have also been injured, some, seriously and some victims have even lost their lives because they were either killed by the offenders or because they succumbed to the injuries suffered in the course of the commission of the offences by the offenders for example being pushed by the snatch thieves or being dragged along the road by motorcycles ridden by the snatch thieves. Those victims who have survived are traumatised and permanently scarred, some physically and others mentally and emotionally for life.

[53] Some of the victims have reacted by impulse or by their natural instinct by going after the snatch-thieves in order to retrieve their snatched handbags containing their important documents such as their identity cards, driving licences, bank ATM cards, passports, etc and their cash and valuables such as watches, jewellery, mobile telephones, etc only to be injured in the process. Lately, there are also incidents reported in the newspapers where the snatch-thieves have been injured by the victims who have resorted to taking the law into their own hands thereby exposing them to possible prosecution by the Public

A Prosecutor if he is so minded. Family members and relatives of the dead and injured victims have had to struggle to get on with their lives.

[54] Many others have had to resort to living in gated
B communities or guarded neighbourhoods in order to feel a sense of security while staying in their own homes or going in and out of the front gates of their houses.

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